

CATHERINE CORTEZ MASTO
Attorney General
LEEANN PHOUTHAVONGSAY
Deputy Attorney General
Nevada State Bar No. 9892
Public Safety Division
555 E. Washington Ave., Ste. 3900
Las Vegas, NV 89101
Ph: (702) 486-3267
Fax: (702) 486-3773
Attorneys for Defendants

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF NEVADA

WILLIE LEWIS,

Plaintiff,

v.

A. ENDELL, E.K. McDANIELS, JOE
BRACKBILL, TONY JONES, ROBERT
CHAMBLISS, and JOHN DOE,

Defendants.

CASE NO. : 2:08-cv-00157-RLH-LRL

**DEFENDANTS' MOTION FOR VIDEO
CONFERENCE**

DEFENDANTS ADAM ENDEL and ROBERT CHAMBLISS, by and through counsel, CATHERINE CORTEZ MASTO, Attorney General, and LEEANN PHOUTHAVONGSAY, Deputy Attorney General, hereby submit their Motion for Video Conference.

This Motion is made and based upon the accompanying points and authorities, all pleadings and papers on file herein, and the arguments of counsel if the Court deems a hearing appropriate in this matter.

MEMORANDUM OF POINTS AND AUTHORITIES

I. STATEMENT OF FACTS

Plaintiff filed his Amended Complaint on April 21, 2008. (Court Docket "CD" #6). Plaintiff's Amended Complaint alleges Defendants violated his Eighth Amendment right to be free from cruel and unusual punishment while being housed at Ely State Prison (ESP). *Id.* Plaintiff claims on April 7, 2007, he fell off the top bunk in his cell because he had a seizure. Plaintiff claims he was restricted to a lower bunk at the time of the alleged fall. *Id.* The only

1 remaining claim in Plaintiff's Complaint is Count I against Defendants in their individual
2 capacities. (Court Docket "CD" #25).

3 On February 4, 2010, this Court entered an Order Scheduling a Settlement
4 Conference. (CD #58). In its Order, the Court requested the Attorney General's office be
5 responsible for transportation of plaintiff to and from the settlement conference on May 11,
6 2010. (CD #58, p. 3). Because of the burden and costs associated with transporting the
7 Plaintiff to and from the settlement conference, Defendants submit the instant motion.

8 **II. ARGUMENT**

9 Plaintiff has been ordered to appear personally at his May 11, 2010 settlement
10 conference, and the Office of the Attorney General has been ordered to facilitate the same.
11 While counsel speculates that in the past, there was a general movement for inmates to
12 personally appear at the Settlement Conference, counsel believes the idea of inmates being
13 transported to personally appear for court has fallen out of favor for the reasons enumerated
14 herein.

15 State prisoners are not entitled, as a matter of right, to appear personally at hearings in
16 their civil rights actions. *Conway v. Dunbar*, 448 F.2d 765, 766 n. 2 (9th Cir. 1971) and *Potter*
17 *v. McCall*, 433 F.2d 1087, 1088 (9th Cir. 1970). There do not appear to be any exigent
18 circumstances in the present action requiring Plaintiff to personally attend the May 11, 2010
19 settlement conference. Additionally, Plaintiff's personal attendance at the Settlement
20 Conference is unnecessary as appearance by video conference would suffice.

21 The Prison Litigation Reform Act of 1996 at 42 U.S.C. §1997e(f)¹ mandates, to the
22 extent practicable, inmate participation in pretrial proceedings by telephone or video
23 conference without removing the prisoner from the facility in which the prisoner is confined:

24 (f) Hearings

25 (1) To the extent practicable, in any action brought with
26 respect to prison conditions in Federal court pursuant to
27 section 1983 of this title, or any other Federal law, by a
28 prisoner confined in any jail, prison, or other correctional
facility, pretrial proceedings in which the prisoner's

¹ Subsection (f) was not altered or amended by the Prison Abuse Remedies act of 2007. (2007 CONG US HR 4109).

1 participation is required or permitted shall be conducted by
 2 telephone, video conference, or other telecommunications
 3 technology without removing the prisoner from the facility in
 which the prisoner is confined. [Emphasis added].

4 (2) Subject to the agreement of the official of the Federal,
 5 State, or local unit of government with custody over the
 6 prisoner, hearings may be conducted at the facility in which
 7 the prisoner is confined. To the extent practicable, the court
 shall allow counsel to participate by telephone, video
 conference, or other communications technology in any
 hearing held at the facility.

8 42 U.S.C. §1997e(f).

9 The Plaintiff is classified to serve his sentence at Nevada's High Desert State Prison
 10 ("HDSP"). There is an added monetary expense in transporting the Plaintiff personally to the
 11 settlement conference as opposed to him appearing via video conferencing.

12 As an alternative to the Plaintiff appearing personally, Defendants propose an
 13 appropriate remedy for all parties would be for the Plaintiff to conduct his May 11, 2010
 14 settlement conference in this case by video conference.

15 **III. CONCLUSION**

16 Based on the foregoing, Defendants respectfully request the Court grant Defendants'
 17 Motion for Plaintiff to appear via video conference at his May 11, 2010 settlement conference.

18 DATED this 26th day of April, 2010.

19 Respectfully submitted,

20 CATHERINE CORTEZ MASTO
 21 Attorney General

22 By: /s/LEEANN PHOUTHAVONGSAY
 23 LeeAnn Phouthavongsay
 24 Deputy Attorney General
 25 Public Safety Division
 555 E. Washington Ave., Ste. 3900
 Las Vegas, NV 89101
 Attorneys for Defendants

26 **IT IS SO ORDERED.**

27 

28 **UNITED STATES MAGISTRATE JUDGE**
 DATED: 4-27-10

CERTIFICATE OF SERVICE

I hereby certify that I am an employee of the Office of the Attorney General and that on the 26th day of April, 2010, I served the foregoing **DEFENDANTS' MOTION FOR VIDEO CONFERENCE** by causing a true and correct copy thereof to be filed with the Clerk of the Court using the CM/ECF system and by causing to be delivered to the Department of General Services for mailing at Las Vegas, Nevada, a true copy thereof addressed to:

WILLIE LEWIS #91716
High Desert State Prison
PO Box 650
Indian Springs, NV 89070

/s/ Gina Long
An employee of the Office of the Attorney General